

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CVS 16487

STATE OF NORTH CAROLINA, *ex rel.*)
ROY COOPER, Attorney General and RAY)
GRACE, Commissioner of Banks,)
Plaintiffs,)
v.)
WESTERN SKY FINANCIAL, LLC;)
CASHCALL, INC.; WS FUNDING, LLC; and)
DELBERT SERVICES CORPORATION.)
Defendants.)

FINAL JUDGMENT BY CONSENT

THIS CAUSE, designated a mandatory complex business case by Order of the Chief Justice of the North Carolina Supreme Court, pursuant to N.C. Gen. Stat. § 7A-45.4(b) (hereinafter, references to the North Carolina General Statutes will be to "G.S."), and assigned to the undersigned Special Superior Court Judge for Complex Business Cases, comes before the Court upon the parties' Joint Motion for Entry of Final Judgment by Consent ("Motion"). Plaintiffs, the State of North Carolina, *ex rel.* Roy Cooper, Attorney General, and Ray Grace, Commissioner of Banks (collectively, the "State"), and Defendants Western Sky Financial, LLC ("Western Sky"), CashCall, Inc. ("CashCall"), WS Funding, LLC ("WS Funding"), and Delbert Services Corporation ("Delbert Services") (collectively, "Defendants") hereby consent to entry of final judgment in this matter as embodied in this Final Judgment By Consent ("Final Judgment") to resolve these matters and to avoid the time, expense, and uncertainty associated with continuing litigation, and any related litigation or appeals, without further trial or adjudication.

THE COURT, after considering the Motion and other appropriate matters of record, including the agreement of all parties to the proposed Final Judgment, concludes that the Motion should be GRANTED, and hereby FINDS, CONCLUDES, ORDERS, and ADJUDGES as follows.

Office of the Attorney General of the State of North Carolina by William v. Conley, Esq. and B. Carrington Skinner IV, Esq., and North Carolina Commissioner of Banks by Lars Nance Esq., for the State of North Carolina.

Womble Carlyle Sandridge & Rice, LLP by The Honorable Burley B. Mitchell, Jr., Hayden J. Silver III, Esq., Raymond M. Bennett, Esq. and James P. Cooney III, Esq., for Defendants.

McGuire, Judge.

I. PARTIES SUBJECT TO FINAL JUDGMENT

1. This Final Judgment is entered pursuant to the North Carolina Consumer Finance Act (“CFA”), N.C. Gen. Stat. § 53-164, *et seq.*, North Carolina’s usury laws (“usury laws”), N.C. Gen. Stat. § 24-1, *et seq.*, and North Carolina’s Unfair and Deceptive Practices Act (“UDAP”), N.C. Gen. Stat. § 75-1.1, *et seq.* Unless otherwise provided, this Final Judgment shall apply to Defendants and their agents, servants, employees, officers, members, directors, affiliates, subsidiaries, representatives, attorneys, successors, heirs, and assignees, and any other person acting under their direction and control, including through any corporation, trust, or other device, and it shall constitute a continuing obligation. For the avoidance of doubt, the terms “successors” and “assignees” do not apply to parties not subject to this Final Judgment that purchased loans from Defendants.

2. All parties are entering into this Final Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation. It is expressly understood that nothing contained in this Final Judgment shall be construed as an admission by Defendants of any liability, wrongdoing, or factual or legal issue, including jurisdiction, and this Final Judgment may not be used as evidence of liability. This Final Judgment is not intended to be used or admissible in any unrelated administrative, civil, or criminal proceeding. Defendants do not waive any defenses they may raise elsewhere in other litigation.

II. DEFINITIONS

3. For purposes of this Final Judgment, the following terms shall have the following meanings:

- a. "Borrower Refund Amount" shall mean the amount that a North Carolina Borrower who entered into a Covered Loan is eligible to receive from the Defendants.
- b. "Covered Loan" shall mean a loan originated by Western Sky to a North Carolina Borrower.
- c. "Effective Date" shall mean the date this Final Judgment is entered by the Court.
- d. "North Carolina Borrower" shall mean a borrower who took out a loan from Western Sky while a resident in North Carolina.
- e. "Outstanding Loan" shall mean those loans that had not been charged-off by the Defendants or paid-off by a North Carolina Borrower as of the Effective Date.
- f. "Refund Eligible Borrower" shall mean any North Carolina consumer who entered into a Covered Loan and has a Borrower Refund Amount greater than \$0.

III. INJUNCTIVE RELIEF

4. Upon entry of this Final Judgment, Defendants, as well as J. Paul Reddam ("Reddam") and any entity of which Reddam is the principal shareholder, are permanently enjoined from the following activities, unless that person or entity obtains a license from the State of North Carolina to do so: (a) advertising, offering, or entering into contracts to offer, fund, service, and/or collect on consumer loans made to North Carolina borrowers; (b) making, facilitating, or assisting in the making of, or financing any consumer loans to North

Carolina consumers; (c) soliciting and/or accepting deposits or payments from North Carolina consumers for any loan product or service; (d) collecting upon any further payment, directly or indirectly, from North Carolina consumers related to any loan product or service; and (e) selling or transferring any loans with North Carolina consumers currently held by any Defendant to a third party.

5. Upon entry of this Final Judgment, Defendants will immediately and permanently cease and desist servicing and collection activities on any Outstanding Loan. Defendants shall discharge, cancel, release, forgive, and adjust to a zero balance all such Outstanding Loans. Within 60 days of the Effective Date, Defendants shall notify any North Carolina Borrower whose Outstanding Loan they currently service or collect by United States mail and electronic mail that the loan has been discharged, canceled, released, and forgiven.

6. Within 60 days of the Effective Date, Defendants will contact Equifax and Experian to request that any credit reporting by Defendants for all North Carolina Borrowers with Covered Loans be removed.

IV. MONETARY PROVISIONS

7. Within 30 days of the Effective Date, Defendants shall pay a total of \$250,000 to the State for reimbursement of the State's costs and attorneys' fees. Defendants will make such payment according to written payment processing instructions provided by the State.

8. Within 10 days of the Effective Date, Defendants shall deposit \$9,025,000 in an escrow account that the State will set up for the purpose of providing refunds to Refund Eligible Borrowers.

9. The parties shall engage Dahl Administration as a third party payment administrator ("Administrator") to facilitate the distribution of borrower refunds totaling \$9,025,000. Defendants shall cover the costs of the Administrator and expenses incurred in providing notice and processing reimbursements up to an amount of \$100,000.

10. The Administrator will determine the Borrower Refund Amount for each Refund Eligible Borrower based on the amount paid in excess of what Defendants would have been able to collect in principal and interest on a Covered Loan, if the loan had been originated at an interest rate of 16% per year. The Borrower Refund Amounts shall be proportional to the amount each Refund Eligible Borrower paid in excess of the 16% interest rate per year. The total of the Borrower Refund Amounts shall equal \$9,025,000. Within 30 days of the Effective Date, the Administrator shall provide to the State a list that includes all Refund Eligible Borrowers, their available contact information, and the corresponding Borrower Refund Amounts.

11. If consumer refunds cannot be distributed or are not cashed by consumers for any reason after one year from the Effective Date, then the unclaimed refunds shall be placed in the North Carolina Escheat Fund as unclaimed property in the name of the consumers, in accordance with Chapter 116B of the North Carolina General Statutes, N.C. Gen. Stat. § 116B-1, *et seq.*, and in accordance with the unclaimed property policies and procedures of the North Carolina State Treasurer. In no event shall any unclaimed Borrower Refund Amounts be returned to Defendants.

12. Within 60 days of the Effective Date, the Administrator shall have delivered via postal mail and email, if applicable, to all Refund Eligible Borrowers, a "Notification of Refund Eligibility," which notifies borrowers of this Final Judgment. The Notification of Refund Eligibility shall require Refund Eligible Borrowers to sign and return a Participation Form and a Consumer Release (in the form specified in Exhibit A). The parties shall direct the Administrator to attempt to continue to locate and contact Refund Eligible Borrowers that they are unable to reach in accordance with the provisions of Paragraph 16. The Administrator shall work with the parties to draft appropriate and clear communications to Refund Eligible Borrowers to be made via mail and email, as well as to establish appropriate

deadlines to ensure that the maximum number of Refund Eligible Borrowers are reached, consistent with the terms of this Final Judgment. The State must give final approval to any correspondence from the Administrator to Refund Eligible Borrowers.

13. The parties shall direct the Administrator to ensure that the Notification of Refund Eligibility clearly instructs the Refund Eligible Borrower to sign and return the Participation Form and Consumer Release. The Form should indicate that the refund will be available through the Administrator for one year from the Effective Date, after which time the refund will be available through North Carolina's Unclaimed Property Fund. The parties shall direct the Administrator to send each Refund Eligible Borrower, who returns a Participation Form and Consumer Release, a check in the amount of the Borrower Refund Amount.

14. All funds distributed by the Administrator shall be by check that is valid for 90 days from the date of issuance. The parties shall direct the Administrator to contact in writing, by mail or email, each Refund Eligible Borrower to whom such refund checks were issued, if such check has remained un-cashed for more than 90 days. The Refund Eligible Borrowers may, within one year of the Effective Date, have such un-cashed checks re-issued, such re-issued checks to be valid for 60 days from their issue date. Except as provided in Paragraph 20, Defendants will not pay more than (i) \$9,025,000 in settlement of the claims in this action, (ii) \$250,000 for reimbursement of the State's costs and attorneys' fees, and (iii) \$100,000 to cover the costs of the Administrator and expenses incurred in providing notice and processing reimbursements.

15. The parties shall direct the Administrator to maintain a website with the terms and conditions of the Final Judgment as well as information by which Refund Eligible Borrowers may contact the Administrator to inquire as to their refund eligibility, verify or update their contact information, and learn of the procedures to obtain refunds. If either

party objects to language or content included on this website, the Administrator shall change such language or content so that it is acceptable to both parties.

16. The parties shall direct the Administrator to make all reasonable efforts including by written letter, email, or telephone, to locate or follow-up with all Refund Eligible Borrowers who (a) the Administrator did not successfully contact because of incorrect or unavailable contact information; (b) did not submit a claim within 30 days of the Administrator's attempt to contact the borrower; or (c) submitted a claim but whose refund payment was returned. Such reasonable efforts shall include, but not be limited to, the use of commercially-available databases and public records. If contact information for the borrower is identified, the parties shall direct the Administrator to, within seven days, send the Notification of Refund Eligibility to the Refund Eligible Borrower at the new address or, if a refund payment was previously returned, the refund payment.

17. The parties shall direct the Administrator to provide the State and Defendants monthly reports that provide the following information for Refund Eligible Borrowers: (i) total number of claims received; (ii) total amount paid; and (iii) number of Refund Eligible Borrowers yet to file claims and subsequent efforts made to contact them. The parties shall direct the Administrator, upon request of the State, to provide the State all documentation and information necessary to confirm compliance with the Final Judgment. At the conclusion of the claims period, the Administrator shall provide the parties with a report detailing: (i) the names and contact information of all Refund Eligible Borrowers who received a Refund from the Administrator; (ii) the Refund amount that each Borrower received; (iii) the names and contact information of Refund Eligible Borrowers who could not be located by the Administrator; (iv) the names and contact information of Refund Eligible Borrowers who did not submit claims; and (v) the names and contact information of Refund Eligible Borrowers who received a check, but did not cash it. The Administrator shall comply with the notice

provision of N.C. General Statute § 116B-59 and deliver copies of such notices to the State. After the Administrator has escheated the unclaimed funds, it shall provide the State proof of the escheatment and a list of the consumers' names and refund amounts escheated.

V. COMPLIANCE AND ENFORCEMENT

18. Upon application by the State showing that any of the Defendants has failed to make any payment required by this Final Judgment, Defendants consent to this Court's entry of a money judgment in the amount due plus interest at the statutory rate of 16 percent per annum from the date of violation or nonpayment that is applicable to all Defendants, and the State shall have execution thereof.

19. Any notices, statements, or other written documents required by this Final Judgment shall be provided by first class mail and email to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the party changing such address:

For the State, to:

B. Carrington Skinner IV
Assistant Attorney General
William V. Conley
Special Deputy Attorney General
Financial Fraud Unit
Consumer Protection Division
Post Office Box 629
Raleigh, North Carolina 27602
wconley@ncdoj.gov
cskinner@ncdoj.gov

Lars F. Nance
Special Deputy Attorney General
Counsel to North Carolina Commissioner of Banks
Post Office Box 629
Raleigh, North Carolina 27602
lnance@ncdoj.gov

For CashCall, WS Funding, and Delbert Services, to:

Joseph L. Barloon

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
jbarloon@skadden.com

For Western Sky, to:

Hayden J. Silver III
Womble Carlyle Sandridge & Rice, LLP
555 Fayetteville Street
Suite 1100
Raleigh, NC 27601
jsilver@wCSR.com

VI. EFFECT OF OTHER AGREEMENTS

20. Should one or more of the Defendants enter into any subsequent agreement with any other state Attorney General, or other state enforcement or regulatory authority (an “Authority”) regarding Western Sky loan borrowers in any other single state (a “Subsequent Settlement Agreement”) that has benefits and terms more favorable to the Authority than those in this Final Judgment, then this Final Judgment shall be deemed to be modified to provide the State with those more favorable benefits and terms if and only if: (a) the Subsequent Settlement Agreement requires restitution to borrowers in a single state that exceeds \$9,025,000, and such restitution represents more than 40% of the amount of usurious interest collected by Defendants in that state; and (b) the Subsequent Settlement Agreement precedes a final court judgment, defined as a final jury trial or final appellate decision of the State’s highest court affirming any order to pay.

21. Any additional funds that become available to refund to North Carolina Borrowers as a result of Paragraph 20 prior to the Administrator’s distribution of any refunds pursuant to this Final Judgment shall be included within the refunds provided by the Administrator. Should additional funds subsequently become available as a result of this provision, Defendants shall pay to the State at the conclusion of the claims process an amount

equal to the total amount of additional refunds that would be due to those North Carolina Borrowers that were provided refunds by the Administrator.

22. Defendants shall notify the State of the existence of such more favorable benefits and terms within 30 days of the execution of such Subsequent Settlement Agreement and the State shall have the right to receive the more favorable benefits and terms immediately. If the parties cannot reach agreement as to whether a Subsequent Settlement Agreement contains more favorable terms, the dispute shall be resolved by the Court, and the parties waive their right to appeal.

VII. GENERAL PROVISIONS

23. Nothing herein relieves Defendants of their duty to comply with applicable laws of the State of North Carolina nor constitutes authorization by the State for Defendants to engage in acts and practices prohibited by such laws. This Final Judgment shall be governed by the laws of the State of North Carolina.

24. Nothing herein constitutes approval by the State of any of Defendants' past, present, or future business practices, and Defendants shall not make any representation to the contrary.

25. Defendants agree that the North Carolina Business Court, General Court of Justice, Superior Court Division, Wake County, North Carolina, has jurisdiction over the parties and subject matter of this action for the sole purpose of entering this Final Judgment. Furthermore, Defendants agree this Court shall retain jurisdiction over this matter solely for the purpose of enabling any party to this Final Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification, or execution of this Final Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof. Defendants consent to the jurisdiction, venue, and process of this Court solely if there is any claim, cause of action, or proceeding

arising out of or based upon this Final Judgment. Other than as provided in this paragraph, Defendants and Plaintiffs waive any and all further legal action in *State of North Carolina, ex rel. Roy Cooper, Attorney General, and Ray Grace, Commissioner of Banks v. Western Sky Financial, LLC; CashCall, Inc.; WS Funding, LLC; and Delbert Services Corporation* (Wake County 13 CVS 16487), including but not limited to any right to appeal, petition for certiorari, or move to reargue or rehear this Final Judgment.

26. This Final Judgment may be executed in counterparts.

27. If any provision(s) of this Final Judgment is held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

28. This Final Judgment may be amended solely by written agreement signed by the State and Defendants or their authorized representatives and with the approval of the Court.

29. This Final Judgment represents the entire agreement between the parties hereto and a complete merger of prior negotiations and agreements.

30. On the date this Final Judgment is entered by the Court, it shall be entered as and become a final judgment of the Court and such date shall be the effective date of this Final Judgment for all purposes.

31. By entering this Final Judgment, the State, *ex rel.* Roy Cooper, Attorney General, and Ray Grace, Commissioner of Banks, to the extent permitted by law, agrees and acknowledges that execution of this Final Judgment hereby releases and discharges Western Sky, Martin A. Webb, CashCall, WS Funding, Delbert Services, and Reddam, as well as their agents, servants, employees, officers, members, directors, affiliates, subsidiaries, representatives, attorneys, successors, heirs, and assignees, and any other person acting

under their direction and control, including through any corporation, trust, or other device, from any and all claims, grievances, suits, and causes of action arising out of the conduct alleged in the Complaint, whether arising in contract, tort, statute, or any other theory of action, whether arising in law or equity, whether known or unknown, choate or inchoate, matured or un-matured, contingent or fixed, liquidated or unliquidated, accrued or un-accrued, asserted or un-asserted, based upon any fact, whether known or unknown, that happened prior to the Effective Date of the Final Judgment.

32. Any Refund Eligible Borrowers who submit a claim and receive a refund from the Administrator pursuant to the terms of this Final Judgment shall be required by the Administrator to provide to the Defendants a release and discharge in the form attached hereto as Exhibit A prior to receipt of the refund. This consumer release is intended to cover future, private suits, and does not include claims arising from actions filed prior to April 20, 2016, or from actions instituted or settlements reached by a government agency or entity at any time. Nothing herein shall prohibit Refund Eligible Borrowers from receiving benefits from claims related to actions filed prior to April 20, 2016 or from claims related to actions filed by or settlements reached by a government agency or entity at any time. Amounts claimed by Refund Eligible Borrowers under this Final Judgment may be used to reduce or off-set future recovery.

33. Upon entry of this Final Judgment, all claims in this action are hereby DISMISSED, and this case will be CLOSED on the Court's docket, subject to the parties' rights to seek further orders from this Court as set forth herein.

SO ORDERED, ADJUDGED, and DECREED this the 15th day of June, 2016.

/s/ Gregory P. McGuire

Gregory P. McGuire
Special Superior Court Judge
for Complex Business Cases

EXHIBIT A

CONSUMER RELEASE

In consideration for the payment to me pursuant to the Final Judgment by Consent (“Final Judgment”) in the matter of the *State of North Carolina v. Western Sky Financial, LLC, et al.*, I hereby release and forever discharge Western Sky Financial, LLC, Martin A. Webb, CashCall, Inc., WS Funding, LLC, Delbert Services Corporation, and J. Paul Reddam, as well as all of their agents, servants, employees, officers, members, directors, affiliates, subsidiaries, representatives, attorneys, successors, heirs, and assignees, and any other person acting under their direction and control, including through any corporation, trust, or other device, from any and all future, private claims, grievances, suits, and causes of action relating to or arising out of the conduct alleged in the matter referenced above, whether arising in contract, tort, statute, or any other theory of action, whether arising in law or equity, whether known or unknown, choate or inchoate, matured or un-matured, contingent or fixed, liquidated or unliquidated, accrued or un-accrued, based upon any fact, whether known or unknown, that happened prior to the effective date of the Final Judgment, provided that such claim has not yet been filed in a court of law as of April 20, 2016; and I further acknowledge that the amount of any additional payment in any such previously-filed action may be reduced or offset by the payment to me pursuant to the Final Judgment. Nothing in this release shall prohibit me from participating in or receiving benefits from claims related to actions filed prior to April 20, 2016, or from claims related to actions filed by or settlements reached by a government agency or entity at any time.